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October 6, 2023

VIA ECF

Honorable Cheryl L. Pollak
United States District Court, Eastern District of New York
225 Cadman Plaza East
Courtroom 13B - South
Brooklyn, New York 11201

Re: *Fitzgerald v. Sodexo Inc., et al.*,
Case No.: 22-cv-3410 (AMD) (CLP)

Dear Judge Pollak:

We represent Defendants Sodexo Inc. (“Sodexo”) and NewYork-Presbyterian/Queens, incorrectly sued herein as “NY Presbyterian Queens,” (“NYPQ”) (collectively “Defendants”), in the above-referenced matter. Pursuant to the Court’s Order dated July 26, 2023 (“July 26 Order”), we respectfully submit this status report.

As the Court is aware, Defendants were Ordered in the July 26 Order to re-serve their interrogatories on Plaintiff and Plaintiff was Ordered to respond to the interrogatories by August 31, 2023. The July 26 Order states that “[f]ailure to provide responses to defendants’ interrogatories could result in this Court making a recommendation to dismiss this matter for plaintiff’s failure to prosecute.” Defendants were also ordered to re-send Plaintiff a HIPAA authorization for BMCC records.

Defendants have complied with the July 26 Order by re-serving their interrogatories and document requests via email and regular mail on July 26, 2023, which included copies of HIPAA authorizations for Community Counseling & Mediation (“CCM”) and Sunrise Medical Group – Maimonides Medical Center (“Sunrise”).¹

On August 25, 2023, the undersigned received documents in the mail from Plaintiff, but the documents did *not* contain Plaintiff’s responses to Defendants’ interrogatories. Instead, Plaintiff provided only a signed copy of the Verification page that was included with Defendants’ interrogatories, without including any responses.

¹ Plaintiff stated during the conference held with the Court on July 20, 2023, that he received mental health treatment from “BMCC” located at 535 Clinton Avenue, Brooklyn, New York. However, we were unable to find any mental healthcare provider with the name “BMCC” at that address. In an abundance of caution, we prepared HIPAA authorizations addressed to CCM and Sunrise, which were the only mental healthcare providers we were able to identify located at 535 Clinton Avenue. We confirmed with CCM over the telephone that Plaintiff has visited CCM as a patient.

The documents we received on August 25 also included Plaintiff's signed authorizations for CCM and Sunrise, which we promptly sent to those healthcare providers with our requests for Plaintiff's medical records. To date, we have not received Plaintiff's medical or mental health records from CCM and we received a response from Sunrise stating that it had no records for Plaintiff.²

Defendants sent a deficiency letter to Plaintiff on September 1, 2023, by email and regular mail, requesting Plaintiff's responses to Defendants' interrogatories and to most of the requests in Defendants' First Request for Production of Documents. We have not received any response from Plaintiff.

The July 26 Order states, "After plaintiff responds, the parties should proceed with depositions." However, because Plaintiff has failed to provide responses to the interrogatories or to most of Defendants' document requests, we are unable to proceed with scheduling Plaintiff's deposition.

We plan to address the deficiencies in Plaintiff's discovery responses, including his failure to provide responses to Defendants' interrogatories as he was Ordered to in the July 26 Order, at the status conference scheduled for November 22, 2023, unless the Court wishes for us to address them sooner.

We thank the Court for its attention to this matter.

Respectfully submitted,

JACKSON LEWIS P.C.

William Kang

William Kang

cc.: Barry Fitzgerald (via regular mail and email)

² We have followed up with CCM and were told that we would be receiving Plaintiff's records shortly.